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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/827,169 | 04/19/2004 | Neal B. Gittleman | | 2420 |

7590 08/03/2005
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EXAMINER

BUMGARNER, MELBA N

ART UNIT PAPER NUMBER

3732

DATE MAILED: 08/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/827,169

Applicant(s)

GITTLEMAN, NEAL B.

Examiner

Melba Bumgarner

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 3 is objected to because of the following informalities: recitation of “said low profile impression caps,” “said perforated wings,” “said single flat projection,” and “the proximal teeth” lack sufficient antecedent basis. Appropriate correction is required.
2. Applicant is advised that should claim 1 be found allowable, claim 4 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).
3. It is also noted that the applicant should file amendment(s) in compliance with 37 CFR 1.121.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halldin et al. (6,824,386) in view of Kumar (6,382,977). Halldin et al. disclose a dental implant registration apparatus comprising an impression post or abutment 1 having a lower, implant compatible, clocking and locking means 2, a tapered, truncated, conical upper region 5 having a single flat face 15 and a circumferential retaining groove 9, a top surface 6 with a counter-sunk, axial hole

19, and a low profile impression cap 201 with side wings 242 and with a tapered, truncated, conical recess 243 having a single flat projection 215 clocking with the flat face, the cap having a circumferential inward projecting ridge 209 snapping into and mating with the groove; however, Halldin et al. do not show perforated side wings. Kumar teaches an impression cap comprising wings 42 with perforation 50. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wings of Halldin et al. with perforations as shown in Kumar in order to have features in the cap to retain impression material in view of Kumar (column 8 line 10). Halldin et al. also does not show the hole being a through-hole for an implant mounting screw. It would have been obvious to one of ordinary skill in the art to have the post and screw separate, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177,179. As to claim 2, Halldin et al. show the side wings oriented lengthwise perpendicular to the flat projection (figure 7d). As to claim 3, Kumar teaches variations in the orientation of the wings (column 7 line 66 - column 8 line 7). The orientation of the wings with respect to the single flat projection is not disclosed as critical to the claimed invention in that the specification shows the wings oriented lengthwise perpendicular to the single flat projection.

Response to Arguments

6. Applicant's arguments filed May 16, 2005 have been fully considered but they are not persuasive. As to the objection to claim 4 being a substantial duplicate of claim 1, the preamble and the structural limitations in the body are identical with the only exception being that one claim uses the term "impression post" and the other "impression abutment" as a component of the apparatus. Applicant argues the intended method of use of the apparatus. Perhaps they could

be combined in the alternative language. In response to the art rejections, the applicant argues the intended method of use of the apparatus, i.e. a low profile transfer process using a triple tray, which is irrelevant because it is not claimed and if it were, it would not be given patentable weight in an apparatus claim. The Kumar reference is used in combination with the apparatus of Halldin to show the feature of perforations in the wings, not the features of the cap and post. The words "low profile" is a relative term with no structural limitations; furthermore, the specification shows low profile impression caps with shorter and longer impression caps for differing bone and soft tissue heights.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Vogt et al. (WO 02/087461) and Gittleman (6,508,650) are cited to show the state of the art with respect to a dental implant registration apparatus.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melba Bumgarner
Primary Examiner